

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 18, 2006  
TIME: 9:00 am  
PLACE: DLNR Board Room  
Kalanimoku Bldg.

Chairperson Peter T. Young called the meeting of the Commission on Water Resource Management to order at 9:03 a.m.

The following were in attendance and/or excused:

**MEMBERS:** Mr. Peter Young, Ms. Meredith Ching, Ms. Stephanie Whalen, Mr. James Frazier, Mr. Neal Fujiwara, Dr. Lawrence Miike

**STAFF:** Dean Nakano, Roy Hardy, Ed Sakoda, Lenore Nakama, Neal Fujii, Josh Hekeia, Charley Ice

**EXCUSED:** Dr. Chiyome Fukino

**COUNSEL:** Colin Lau, Esq.

**OTHERS:** Glenn Higashi, Jim Parham, Ali Fares, Ahmet Dogan, Bill Paty, Kapua Sproat, Jonathan Scheuer, Tom Nance, Larry Jeffs, Barry Usagawa, Koa Kaulukukui, Kelvin Sunada, James Lum

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

**A. APPROVAL OF MINUTES**

September 20, 2006

MOTION: (FUJIWARA/CHING)  
To approve the minutes.  
UNANIMOUSLY APPROVED.

**B. ANNOUNCEMENTS**

Acting Deputy Director Nakano reported that Peter Adler completed mediation proceedings with respect to the Wailuku Waste Complaint. Unfortunately, the mediation did not result in any agreement between the parties. He provided a copy of the mediator's report,

conveying to Dr. Miike, the hearing officer, that the mediation was unsuccessful, thanked the parties, and the need to move on to a contested case hearing.

Commissioner Whalen recused herself from Item C-1 below.

### **C. GROUND WATER REGULATION**

1. **Robinson Kunia Land, LLC APPLICATION FOR A WATER USE PERMIT, Robinson No. 1 Well (Well No. 2602-03), TMK 9-4-04:12, WUPA No. 767, New (Industrial) Use for 0.100 mgd, Waipahu-Waiawa Ground Water Management Area, Oahu**

PRESENTATION OF SUBMITTAL: Lenore Nakama

#### **RECOMMENDATIONS:**

This application meets the criteria for obtaining a water use permit, and staff recommends that the Commission:

1. Approve the issuance of Water Use Permit No. 767 to Robinson Kunia Land, LLC for the reasonable and beneficial use of 0.100 million gallons per day of ground water for agricultural (food processing) use from the Robinson No. 1 Well (Well No. 2602-03), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:
  - a. Should an alternate permanent source of water be found for this use, the Commission reserves the right to revoke this permit, after a hearing.
  - b. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.
  - c. The permittee shall ensure that the water is recycled by either directing it into the Waiahole Ditch for use by downstream farmers (subject to the approval of the Agibusiness Development Corporation's Board) or into Waikele Farm's existing irrigation system.
  - d. The permittee shall file a completed application to modify WUP No. 758 to reduce the allocation by 0.100 mgd within 60 days. If a completed water use permit modification application is not received within 60 days from this submittal's date, then the subject water use permit application (WUPA No. 767) shall be deemed denied without prejudice without the need for another hearing.

2. Find that the water use permit modification application required under Special Condition d. will result in a more efficient use of water than is possible under the existing permit, and delegate the authority to the Chairperson to approve the water use permit modification application without a hearing, provided that no substantive issues are raised during the review period. If substantive issues are raised, then the staff will submit the modification application to the full Commission for action.

#### DISCUSSIONS:

Commissioner Fujiwara asked about the treatment of the water. Ms. Nakama stated that it was chlorine treated.

Mr. Larry Jeffs added that the water is treated in four stages in-house. There is no public system that is treating the water.

Commissioner Frazier referred to the report by Tom Nance in Exhibit 3 and asked why only 50 percent of the food processing water is used for crop irrigation.

Ms. Nakama answered that the applicant initially proposed to recycle 50 percent of the water. However, during the site visit, Waikele Farms indicated that they are committing to recycling 100 percent of the water. There is some overspray which is unavoidable, but the rest will be recycled.

Commissioner Frazier asked if there will be any recording or monitoring of the volume that is being used in the processing.

Mr. Jeffs answered that the current food processing water is not metered separately from the irrigation water. The proposal is a separate system that will be metered at the well, as required. So, it will be uniquely monitored at the well head.

Dr. Jonathan Scheuer, Office of Hawaiian Affairs (OHA), supports the staff submittal. He made clarifying comments on the allocation of Waiahole water that is being reduced. OHA is pleased that CWRM is modifying the WUP application form to note that the applicant has an affirmative duty, under the Public Trust, to show that there is no impact on public trust resources or values from an application. When modifying the form, OHA suggested that the CWRM set up criteria to analyze whether or not there is sufficient claim on Public Trust impacts. OHA was pleased to see that CWRM is revoking permits for water use in this area that have not been used. OHA continues to believe that it is within the Commission's discretion to condition a permit's transferability and that final determination will be made at the AG's office. Dr. Scheuer emphasized the loophole that will impact the Commission's ability to make changes after permits have been transferred. He suggested a legislative change to close that loophole.

Commissioner Miike noted that the Water Code's provisions for transferability require that the conditions of use remain the same. Therefore, transfers cannot be restricted. This was

addressed in the Waiahole Ditch Contested Case Hearing. Secondly, it is not true that the applicant can show no impact on the resource. There will always be an impact on the resource. The test is the presumption in favor of the resource, the applicant has to show the private use is reasonable and beneficial enough to overcome the presumption.

Dr. Scheuer thought he might have misstated his analysis and agreed with Commissioner Miike's analysis on the second point. On the first point, OHA's concern is with transferring to the County which is the loophole that OHA would like to see addressed.

MOTION: (FUJIWARA/CHING)

To approve the submittal.

UNANIMOUSLY APPROVED.

## **G. NON-ACTION ITEMS**

### **1. Crop Irrigation Demand Model Project Status Report**

Dr. Ali Fares, University of Hawaii, College of Tropical Agriculture and Human Resources gave the Commission a progress briefing on the Crop Irrigation Demand Project. The goal of this project is to develop a GIS-based system to estimate irrigation water requirements in the State of Hawaii.

Commissioner Whalen asked about field testing the model.

Dr. Fares stated that field testing will be done at the same time the model is being developed.

Acting Deputy Director Nakano stated that Dr. Fares' model would be a tool for staff to better analyze new permit applications. At some point, field testing should be done. Testing can also be done using the CWRM's water use data.

Commissioner Whalen asked if the report will list the elements that create uncertainty in the results. She was concerned about the parameters of uncertainty.

Dr. Fares replied that a Users Manual will be developed that specifies the exact assumptions and conditions under which the results are derived. The report will list all assumptions up front and can include a percent accuracy.

On the field test issue, Commissioner Miike asked staff to follow up on water use reporting to see if the permittee is using less or too much. If the Commission doesn't permit enough water for irrigation, the permittee will come back for more. Staff can then look at the past weather data, etc. and see what kinds of irrigation systems were being used. This can be used as a field test. Future water use permits can be monitored on a regular basis.

**2. Stream Protection and Management (SPAM) Program Briefing**

Dr. Jim Parham of the Bishop Museum updated the Commission on the organizational structure and status of the Commission's surface water information database. Dr. Parham is also working with the Division of Aquatic Resources (DAR) in developing their aquatic survey database. The DAR database framework is the same framework that is being implemented for management of the Commission's surface water information. The surface water database development is a joint effort between Bishop Museum and CWRM staff. The goal is to integrate all surface water data into one related database. In working with DAR, an atlas on Hawaiian watersheds and all aquatic information that was collected statewide will be coming out soon.

Commissioner Fujiwara asked if the DAR database could be used in place of hiring consultants to collect this type of information.

Dr. Parham answered in the affirmative; however, one would still need to reference DAR's atlas.

Acting Deputy Director Nakano noted that CWRM's goal is to also assimilate data from the Department of Health (DOH), and recognized Kelvin Sunada of the Environmental Planning Office, DOH who is assisting CWRM in this effort.

**H. NEXT COMMISSION MEETINGS (TENTATIVE)**

1. November 15, 2006
2. December 20, 2006

Respectfully submitted,

FAITH F. CHING  
Secretary

APPROVED AS SUBMITTED:

DEAN A. NAKANO  
Acting Deputy Director